S.B. Civil Revision Petition No.115/06
Subhansu Lamba Vs. Daya Shankar & Anr.

Date of Order : 10/08/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Raghunandan Sharma, for petitioner

Instant revision petition has been filed by the petitioner-defendant against the order dated 25th July, 2006 whereby his application filed under O.7 R.11 CPC was rejected by the learned trial Judge.

Respondent-plaintiff filed a suit for specific performance and so also prayed for seeking declaration of the sale deed registered in favour of the present petitioner to be nonest and void. After service of plaint upon the present petitioner, application was filed under O.7 R.11 CPC with an objection that the suit has been under valued and the court fees have not been paid in accordance with Court Fees Act and other objection raised was that suit is barred by limitation.

Learned trial Judge after taking note of both the objections raised by the petitioner, recorded a finding that both the objections can be considered after issues are framed and it cannot be examined at preliminary stage. Hence, this revision petition.

Counsel for petitioner submits that once the suit, according to him, is under valued it was not maintainable which is evident from bare reading of plaint itself. The learned trial Judge has committed a manifest error in rejecting his application and such finding recorded requires interference by this court. In support of his submission, counsel placed reliance on the judgment of this court in **Smt. Kamla & Anr. Vs. Shri Ramesh Chandra & Ors. [2002(4) WLC 321]**.

I have considered the submission of the counsel and and examined the impugned order passed by the learned trial Judge.

So far as the objection with regard to limitation is concerned, it can only be considered after written statement is filed and issue is framed, if there is any objection raised by the defendant in his written statement.

So far as the objection with regard to under valued of the suit is concerned, in my opinion, it can also be considered only on objection if raised in the written statement.

Learned trial Judge while rejecting application under O.7 R.11 CPC under order impugned dated 25th July, 2006 has considered the submissions made and also observed that objection can be considered only after issue is framed.

It is true that such objections should always be considered at preliminary stage as considered by this court in **Smt. Kamla & Anr. Vs. Shri Ramesh Chandra** [supra].

I do not find any error committed by the learned trial Judge in passing of order impugned.

Consequently, the present revision petition fails and is hereby dismissed. However, it is made clear that if such issue is framed, particularly, with regard to under valued of the suit that can be considered at preliminary stage before the matter is being further adjudicated.

[Ajay Rastogi],J.

FRB